

Sunset Public Hearing Questions for
Utility Management Review Board
Created by Section 7-82-701, *Tennessee Code Annotated*
(Sunset Termination June 2020)

Enabling Statute, Purpose, and Rules and Regulations

1. Provide a brief introduction to the board, including information about its purpose, statutory duties, staff, and administrative attachment.

The 95th General Assembly created the Utility Management Review Board (“UMRB” or “the Board”) in 1987 for “the purpose of advising utility district boards of commissioners in the area of utility management.” Tenn. Code Ann. § 7-82-701(a). The Board also oversees and assists financially distressed utility districts pursuant to Tenn. Code Ann. § 7-82-401. The Board began hearing cases in January 1989 and promulgated its rules and regulations in July 1989. Effective July 1, 1989, the UMRB was vested with authority over all utility districts established by any public or private acts. 2007 Tenn. Pub. Acts Ch. 86 transferred the administrative attachment of the UMRB from the Department of Environment and Conservation (“TDEC”) to the Comptroller of the Treasury.

Tenn. Code Ann. § 7-82-702 prescribes the power and authority of the Board:

- **Promulgate rules and regulations for the conduct of the affairs of the board;**
- **Adopt a seal for the board, prescribe the style of the seal and alter the seal at pleasure;**
- **Subject to title 9, chapter 4, appoint and fix the salaries and duties of such experts, agents and employees as it deems necessary;**
- **Make and enter into contracts;**
- **Accept gifts, grants or other moneys and receive appropriations that may be made by law;**
- **Give advisory technical assistance to any utility district upon request;**
- **Review and conduct an informal hearing of any decision of any utility district under § 7-82-402(a) upon simple written request of any utility district customer or any member of the public within thirty (30) days after such decision. In making its decision as to whether the published rates are too high or too low, the utility management review board shall take into account the reasonableness of the utility district's rules, policies, and cost of service as well as any evidence presented during the hearing. Any judicial review of any decision of the board will be held by common law certiorari within the county in which the hearing was held;**
- **Upon the failure of the board of commissioners of a utility district to adopt the rules and regulations required by § 7-82-402(b) or any other section of this chapter or, upon the failure of a utility district to consider and resolve consumer complaints in accordance with such rules and regulations, establish an alternate mechanism for consideration and resolution of such complaints**

through an informal hearing process. In making its decision as to whether the complaint was resolved in accordance with the utility district's rules and regulations, the utility management review board shall also take into account the reasonableness of the utility district's application of its rules, policies, and cost of service as well as any evidence presented during the hearing. Any judicial review of any decision of the board will be held by common law certiorari within the county in which the hearing was held;

- Review and conduct an informal hearing of any decision of any utility district upon a written request of any utility district customer or an affected developer concerning the justness and reasonableness of the utility district's requirement that the customer or the developer build utility systems to be dedicated to the utility district or the justness and reasonableness of fees or charges against the customer or the developer related to the utility systems. The written complaint must be filed within thirty (30) days after the utility board has taken action upon a written complaint to the board of commissioners of the utility district. In making its decision as to whether the requirements, fees, or charges are just and reasonable, the utility management review board shall take into account the reasonableness of the utility district's rules, policies, and cost of service as well as any evidence presented during the hearing. Any judicial review of any decision of the board will be held by common law certiorari within the county in which the hearing was held;
- From time to time, submit to the governor or the comptroller of the treasury its suggestions for proposed amendments to this chapter;
- Exercise all the powers and take all the actions necessary, proper or convenient for the accomplishment of the purposes enumerated in this part;
- Issue subpoenas requiring attendance of witnesses and production of such evidence as requested; administer oaths; and take such testimony as the board deems necessary in fulfilling its purpose. If a person or entity refuses to obey a subpoena issued by the board under this part, the chancery court of Davidson County shall have jurisdiction upon application of the board to issue an order requiring such person to appear and testify or produce evidence as the case may require, and any failure to obey such order of the court may be punished by such court as contempt;
- Conduct a contested case hearing and issue an order on the question of whether a member or members of a utility district board should be removed from office and a new board or member appointed or elected as provided in § 7-82-307(b);
- Conduct a contested case hearing and issue an order on the question of whether a utility district that fills vacancies on its board using a method other than appointment by a county mayor or mayors should be required to begin filling vacancies under the uniform method for the filling of vacancies set forth by § 7-82-307(a)(4) and (5) as provided in § 7-82-307(c);
- Establish, adopt and promulgate in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, rules that the board deems necessary for the training of utility district commissioners;

- Establish, adopt and promulgate in accordance with the Uniform Administrative Procedures Act, rules to define excessive water losses for utility districts;
- Review and approve, by order, the model of ethical standards prepared by the Tennessee Association of Utility Districts (TAUD) for water, wastewater and gas authorities created by a private act or under the general law and for utility districts pursuant to § 8-17-105(b); and review and find, by order, that the ethical standards adopted by any water, wastewater or gas authority created by a private act or under the general law or a utility district that differ from the TAUD model are more stringent than the TAUD model;
- Hear and act upon the request for utility service by or for a utility district customer made pursuant to § 7-82-112; and
- In the conduct of any informal hearing upon request or complaint, the board may receive affidavit evidence, in addition to minutes, transcripts, and other evidence of actions by the utility district, and may render its decision thereon or, if it shall deem an open hearing appropriate, may order the interested parties be notified of the date, time, and place that such hearing will be held.

Staff to the UMRB consists of:

John Greer, Utilities Specialist
Ross Colona, Utilities Specialist

2. Has the board promulgated rules and regulations? If yes, please cite the reference.

The Board's rules are compiled at Tenn. Comp. R. & Regs. 1715-01. (2016).

Board Organization

3. Provide a list of current members of the board. For each member, please indicate who appointed the member, statutory member representation, the beginning and end of the member's term, and whether the member is serving a consecutive term.

The UMRB has nine members, seven of whom are appointed by the Governor. The remaining two members are the Comptroller of the Treasury and the Commissioner of TDEC or their designees.

Member	Representing	Term	Consecutive
Ann Butterworth, Chair	Comptroller of the Treasury Designee	Ex-Officio	N/A
Tom Moss	Environment and Conservation Designee	Ex-Officio	N/A
Phillip Combs	Utility District Manager	2018-2022	No

Pat Riley	Utility District Manager	2016-2020	Yes
Bruce Giles	Utility District Manager	2018-2022	Yes
Dan Coley	Utility District Commissioner	2017-2021	No
Rebecca Hunter	Utility District Commissioner	2015-2019	Yes
Jason West	Utility District Commissioner	2015-2019	Yes
Kevin Botts	Consumer Interest	2017-2021	No

4. Are there any vacancies on the board? If so, please indicate how long the position has been vacant and explain steps that have been taken to fill any vacancies.

The terms of Jason West and Rebecca Hunter expired on October 31, 2019. Board staff has informed the Governor's office and the Tennessee Association of Utility Districts ("TAUD"), as Tenn. Code Ann. § 7-82-701(c) requires the governor to consult with TAUD as to qualified individuals to be appointed to the board.

5. How many times did the board meet in Fiscal Years 2018 and 2019? How many members were present at each meeting? Please note meetings where the board did not have a quorum.

In Fiscal Year 2018 the Board met twice, with attendance at nine and seven members respectively. In Fiscal Year 2019 the Board met three times, with attendance at seven, eight and seven members respectively.

Financial Information

6. What were the board's revenues and expenditure for Fiscal Years 2018 and 2019? Does the board carry a fund balance? If yes, please provide additional relevant information regarding the fund balance.

The Board does not have a revenue stream. Board expenditures, which are limited to travel expenses of Board members, are taken from the Comptroller's budget.

7. What per diem or travel reimbursements do board members receive? How much was paid to board members in Fiscal Years 2018 and 2019?

Board members are reimbursed based upon the State Comprehensive Travel Regulations. Travel expenditures were \$1,152.57 for Fiscal Year 2018 and \$675.82 for Fiscal Year 2019.

Sunshine Law, Public Meetings, and Conflict of Interest Policies

8. Is the board subject to Sunshine law requirements (Section 8-44-101 et seq., *Tennessee Code Annotated*) for public notice of meetings, prompt and full recording of minutes, and public access to minutes? If so, what procedures does the board have for informing the public of meetings and making minutes available to the public?

The Board is subject to the Tennessee Open Meetings Act. It posts its meeting notices in advance on its website, which is under the general website of the Comptroller of the Treasury:

<https://www.comptroller.tn.gov/boards/utilities/utility-management-review-board.html>.

Board minutes are maintained by the Comptroller of the Treasury, which are furnished on request in accordance with the Tennessee Public Records Act.

9. Does the board allow for public comment at meetings? Is prior notice required for public comment to be heard? If public comment is not allowed, how does the board obtain feedback from the public and those they regulate?

The Board gives individuals who represent utility districts or customers who have filed viable complaints with the Board the ability to speak when a case is heard.

10. Does the board have policies to address potential conflict of interest by board members, employees, or other state employees who work with the board?

Pursuant to Tenn. Comp. R. & Regs. 1715-01-.02(4) each Board member is required to file with the comptroller “annual written disclosures of financial interests and other direct and indirect conflicts of interest.” Board members shall not participate in discussion or vote on matters in which the member has a conflict of interest or “if there is any appearance of impropriety as determined by Counsel.” Staff to the Board are employees of the Comptroller of the Treasury and are required to sign conflict of interest disclosure forms annually.

11. Does the board have a website? If so, please provide the web address. What kind of public information is available on the website?

The board has a website, which is under the general website of the Comptroller of the Treasury:

<https://www.comptroller.tn.gov/boards/utilities/utility-management-review-board.html>.

The website provides meeting notices, agendas, meeting packets and board member information. It also contains the free online commissioner training program where utility district commissioners may receive up to six hours of continuing education.

Utility Districts

12. How are utility districts determined to be financially distressed? How are distressed utility districts reported to the board? How many distressed utility districts have been reported to the board in the last two fiscal years?

Tenn. Code Ann. § 7-82-401(g)(3) defines a “financially distressed utility district” as one that “as shown by the audited annual financial reports, has either a deficit in total net position, is in default on an indebtedness, or has a negative change in net position for two (2) consecutive years without regard to any grants, capital contributions, or excluded non-cash items.”

The Comptroller of the Treasury’s Office of Local Government Audit receives the annual audited financial statements from the utility districts and, in accordance with Tenn. Code Ann. § 7-82-703(a), refers them to the Board based on the foregoing statutory criteria.

The Comptroller’s Office referred twenty-four utility districts to the Board for financial distress in Fiscal Years 2018 and 2019.

13. How does the board address problems of distressed utility districts? What are the most common actions taken by the board to address the problems of distressed utility districts? How many financially distressed districts have been consolidated?

The Comptroller’s Office, through Board staff, partners with each of these utilities to offer informal assistance on financial issues. Board staff has visited utilities across Tennessee during the last two fiscal years, speaking with board members and offering technical assistance to maintain financial stability.

The Board’s formal regulatory authority is only required when all efforts from the Comptroller’s Office to informally resolve the issues have been exhausted. Even in such cases, the Board often instructs the utility to continue to partner with Board staff to come to a suitable resolution. In these situations, staff acts as a liaison between the utility and the Board to find a reasonable outcome that protects the best interests of ratepayers.

The Board examined and reviewed each case individually and, when necessary, issued orders with individualized steps to assist each entity in resolving the issue for which it came before the Board. Meeting minutes and orders with more details regarding each case can be provided if needed.

The Board did not order any financially distressed utility districts to be merged in Fiscal Year 2018 or Fiscal Year 2019.

14. How does the board track the performance and financial progress of utility districts under its authority?

The Board provides each utility with individualized steps to complete for financial success. The utilities are then required to report their progress to Board staff. After completion of the initial tasks, utility districts send financial updates to Staff twice annually for review. This process allows the Board to determine whether the course of action is making a positive impact.

15. How many utility districts reported as distressed during the past two fiscal years have become financially stable as a result of the board's action or guidance?

Seven utility districts have been released from Board oversight for financial distress in the Fiscal Years 2018 and 2019. There are nineteen utility districts that are in the final stages of finding financial stability after plans have been enacted by the Board. Staff foresees that these entities will soon be recommended for release. There are three utility districts that are in the beginning stages of developing a plan after being referred to the Board for financial distress.

16. What is the Utility District Revitalization Fund? What are the board's responsibilities and authority regarding the fund? Why is the fund needed? Has money been appropriated to the fund?

Tenn. Code Ann. § 7-82-704(b) provides that the Board may develop a plan of mitigation payments, to be made from the Utility District Revitalization Fund, to consolidated utility systems to offset increased, otherwise unrecoverable costs relating to the consolidation.

Some entities currently under the Board's oversight might benefit from said fund; however, money has never been appropriated to the fund.

17. Which utility districts could currently benefit from the Utility District Revitalization Fund? What is the amount of indebtedness of the districts that could benefit from the fund?

While several entities under the Board's oversight might benefit from such a fund, no specific cases have been considered due to the lack of funding.

18. What are the policies and procedures for requesting a utility district rate review by the board? What documentation is required of a customer requesting a rate review?

Tennessee law prescribes two avenues by which utility district customers may obtain a rate review from the Board. First, pursuant to Tenn. Code Ann. § 7-82-102, ten

percent of the customers within the authorized area of the district may submit a petition for Board review containing various statutory requirements. Second, pursuant to Tenn. Code Ann. § 7-82-402, a customer may file a rate protest first with the local utility board, then appeal to the UMRB for review, subject to other statutory requirements.

19. How many rate reviews have been requested in the last two fiscal years? How many rate reviews has the board conducted? What were the board's decisions on rate reviews?

There have been two rate reviews requested in accordance with the foregoing statutory provisions in the past two fiscal years. The administrative law judge dismissed the first petition for procedural reasons, and the second rate protest is expected to be heard at the Board's first meeting of 2020.

20. How many customer complaints have been filed with the board during the last two fiscal years? How many customer complaint cases has the board heard? What were the most common actions taken by the board in response to complaints?

Nine customer complaints were filed in accordance with the appropriate statutory provisions during Fiscal Year 2018, and zero were filed in Fiscal Year 2019.

The Board examined and reviewed each complaint individually and, when necessary, issued orders with individualized steps to resolve each issue. Meeting minutes and orders with more details regarding each complaint can be provided if needed.

21. What is the Utility Relocation Loan Program? What is the Utility Management Review Board's responsibility and authority in the program? How are loans applied for and how do utility districts pay the loans back?

The Utility Relocation Loan Program is established in Tenn. Code Ann. § 67-3-901(j) "for loan financing of all costs incurred by any county, town, city, metropolitan government, utility district, authority or not-for-profit business organizations empowered to provide utility services that provide utility services to customers related to relocating, moving or re-installing their utility facilities, without any additions to their utility facilities, when located within rights-of-way of highways on the system of state highways and required because of highway construction projects administered by the department of transportation."

The General Assembly has designated the UMRB as the agency to review applications and recommend applicants to the state funding board for said loans. Tenn. Code Ann. § 67-3-901(j)(2). In accordance with Tenn. Code Ann. § 67-3-901(j)(3), the Board recommends "an estimated amount of the loan and an interest rate for the loan, utilizing an economic index based upon factors that include, but

are not limited to, per capita incomes and property values of the applicant. Applicants falling within the lower economic scale on the index shall be eligible for lower interest rates. Loans may be recommended at no interest for terms of five (5) years or less.”

Tenn. Code Ann. § 67-3-901(j)(2) prescribes the minimum criteria for eligible loan applicants:

- (A) Are obligated to relocate, move or re-install its utilities due to a state highway project;
- (B) Have been otherwise unable to obtain financing for such relocation at a reasonable cost on reasonable terms;
- (C) Have established fees and charges for services of the utility to be effective immediately or over time sufficient to provide assurance of financial stability, and to agree to adjust such fees and charges periodically to ensure timely payment of loan payments and costs of operation of the system; and
- (D) Have covenanted to take such actions necessary to be able to pay all loan payments when due.

Applications are submitted to the Board and pursuant to Tenn. Comp. R. & Regs. 1200-22-8-.03(2) must include the following:

1. a letter from the local government;
2. a letter from the Tennessee Department of Transportation describing the project and requiring the local government to relocate its utility facilities;
3. an engineering report describing the project, including all estimated costs;
4. estimated time of construction;
5. cash flow projections;
6. evidence of inability to obtain other financing, including but not limited to letters from lending institutions; and
7. three (3) years of audited financial statements.

The Board must process the applications on a first-come, first-served basis. Loans are repaid to TDOT.

22. For the last two fiscal years, how many loans have been made under the Utility Relocation Loan Program and what were the dollar amounts of each loan?

No entities have requested loans in the past two fiscal years.

Reports, Major Accomplishments, and Proposed Legislative Changes

23. What reports does the commission prepare concerning its activities, operations, and accomplishments? Who receives copies of these reports? Please provide a link to any such reports issued in Fiscal Years 2018 and 2019.

Tenn. Code Ann. § 7-82-705 requires the Board to submit an annual report to the governor and the general assembly. The 2018 report is online for public view at:

<https://www.comptroller.tn.gov/content/dam/cot/umrb/advanced-search/2018UtilitiesAnnualReport.pdf>.

24. What were the commission's major accomplishments during Fiscal Years 2018 and 2019?

In the past two years, the Comptroller's Office has taken a proactive approach in assisting utilities with resolving financial and water loss issues in an informal manner before such issues reach the point of a referral to the Board. While the Board is tasked with regulating the financial stability of utilities, Board staff strives to build relationships and partnerships with utility districts across the state and offers them daily assistance by taking a creative approach in ensuring financial stability. The Comptroller's Office, through Board staff, has offered multiple free days of training across Tennessee in an effort to broaden the reach of its assistance and proactive engagement. Additionally, Board staff has partnered with various utility groups, including the Tennessee Association of Utility Districts, the Tennessee Municipal Electric Power Association, the Duck River Agency and the Tennessee Gas Association to provide additional training and technical assistance in locations throughout the state.

Board staff has visited utilities across the state to preemptively assist in answering complex utility questions and find solutions to financial and water loss issues. Board staff is available through a designated utilities email address and phone number to assist in any way possible.

The Board has ensured long term plans are in place for any entity that does come before it for financial distress. These plans are key to building financially stable utilities for future generations.

25. Please describe any items related to the commission that require legislative attention and your proposed legislative changes.

Staff is not recommending any legislative changes at this time.

26. Should the commission be continued? To what extent and in what ways would the absence of the commission affect the public health, safety, or welfare of the citizens of Tennessee?

The Utility Management Review Board should be continued. It plays a vital role in monitoring the fiscal health of approximately 180 utility districts across the state. The Board ensures these systems resolve financial distress and water loss conditions. Additionally, the Board and its staff help systems develop long term financial plans and analyze available funding and resources. Staff also provides important training and advises on issues including rate structures and best practices. Efficient and

financially responsible utility operations protect ratepayers and ensure essential water and wastewater services are delivered reliably for future generations.

At the request of the Chairman of the House Government Operations Committee, all agencies that provide responses to questions as part of the Q&A process should also provide the following information.

27. Identification of the appropriate agency representative or representatives possessing substantial knowledge and understanding of the responses provided to the sunset review questions.

Jason Mumpower, Deputy Comptroller
John Greer, Utilities Specialist

28. Identification of the appropriate agency representative or representatives who will respond to the questions at the scheduled sunset hearing.

Jason Mumpower, Deputy Comptroller
John Greer, Utilities Specialist

29. Office address, telephone number, and email address of the agency representative or representatives who will respond to the questions at the scheduled sunset hearing.

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